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W. U. I. (INTERNATIONAL) 64344

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SUITE 1200

2010 MAIN STREET

IRVINE, CALIFORNIA 92714-7217

(714) 263-8400

FACSIMILE (714) 263-8414

1 SERJEANTS' INN

LONDON EC4Y 1LL

44-71-936-3036

FACSIMILE 44-71-936-3035

September 29, 1992

BY HAND DELIVERY

Ms. Donna R. Searcy,
Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, DC 20554

RE: CC Docket No. 92-166

Dear Ms. Searcy:

Transmitted herewith for filing in the above-referenced docket on behalf of Loral Qualcomm Satellite Services, Inc. are an original and four copies of its "Reply Comments."

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,



William D. Wallace
(Member of Florida Bar only)

Enclosures

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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SEP 29 1992

Federal Communications Commission
Office of the Secretary

In the matter of:)

An Advisory Committee)
to Negotiate Regulations)
for the Provision of Mobile)
Satellite Service in the)
1610-1626.5 MHz and)
2483.5-2500 MHz Bands)

CC Docket No. 92-166

REPLY COMMENTS OF
LORAL QUALCOMM SATELLITE SERVICES, INC.

Loral Qualcomm Satellite Services, Inc. (LQSS), by its counsel, hereby files reply comments with respect to the comments and applications for membership submitted in response to Public Notice DA 92-1085 (released August 7, 1992) (Notice).

In the Notice, the Commission proposed to convene an Advisory Committee to establish technical rules for Mobile Satellite Service (MSS) in the 1610-1626.5 MHz and 2483.5-2500 MHz frequency bands pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and the Negotiated Rulemaking Act of 1990 (NRA), Pub. L. 101-648, November 29, 1990, 104 Stat. 4969. Including LQSS, fifteen parties filed comments and/or applications for membership on the Advisory Committee.^{1/}

1/

These parties are: LQSS, Motorola Satellite Communications, Inc., TRW, Inc., Constellation Communications, Inc., Ellipsat Corporation, AMSC Subsidiary Corporation, Celsat, Inc., Aeronautical Radio, Inc., COMSAT, the Federal Aviation Administration, National Communications System, Litton Systems, Inc., Rockwell International Corporation, and the Wireless Cable Association International, Inc. Boeing Commercial Airplane Group apparently filed a transmittal letter to which no comments were attached.

LQSS agrees with the commenters that supported the Commission's decision to convene the Advisory Committee.^{2/} While it is apparent that the Committee faces a difficult task, the comments suggest that most parties are willing to work collegially in order to accomplish the goals set for the Committee by the Commission.^{3/} In this regard, however, the comments filed by Motorola Satellite Communications, Inc. (Motorola) stand apart, and LQSS feels compelled to reply to the contentious views expressed in Motorola's pleading.^{4/}

2/ LQSS recommends that the Advisory Committee be convened with the smallest number of participants possible. Limiting the size of the Committee would enable it to most effectively negotiate and propose rules to meet the Commission's goals.

3/ Several parties recommended that the Commission reject Celsat, Inc.'s application for membership on the Advisory Committee. LQSS concurs with this suggestion. The Commission has already rejected Celsat's participation in these proceedings. Notice of Proposed Rule Making and Tentative Decision, FCC 92-358, n. 15 (released Sept. 4, 1992) (NOPRM).

Moreover, Celsat is not an applicant for (unlike LEOSAT in the "Little LEO" negotiated rulemaking) -- nor a user of -- the frequency bands which are the subject of the negotiated rulemaking. Cf. Notice, ¶ 7. Its petition for rulemaking has been denied. NOPRM, at n.15. Its spectrum approach is either inconsistent with WARC '92 or to be dealt with by the Commission elsewhere. Id. Any rules regarding its proposed communications service would be outside the scope of the matters for discussion by the Advisory Committee (Notice, ¶ 6). Celsat has no basis for its claim that RDSS/MSS bands relate to its proposed "hybrid" system. It has no basis to claim it will be "significantly affected" by the work of the Advisory Committee. There is, therefore, no ground for the Commission to include Celsat which has no demonstrated "interest" in the proceeding. See 5 U.S.C. § 582(5).

LQSS also agrees with the approach to AMSC taken in the comments of TRW (at 5 n.1) and Motorola (at 6-7).

4/ It should be noted that, in its comments, Motorola expressed what appears to be its opposition to the formation of the Advisory Committee. Motorola Comments, at 2. Moreover,

I. MOTOROLA'S ALTERNATIVE SPECTRUM PROPOSALS SHOULD NOT BE INCLUDED FOR DISCUSSION BY THE ADVISORY COMMITTEE.

Motorola suggests that the "alternative spectrum proposals" identified in its "Petition for Expedited Action" (filed June 9, 1992) "must" be discussed by the Advisory Committee "for there to be any reasonable prospect of achieving consensus during the negotiated rulemaking process." Motorola Comments, at 4.

Motorola claims that the Commission's multiple entry objective (Notice, ¶ 6(a)) "may only be achievable if" there is an increase in the amount of frequency available for the LEO applicants. Id.

Even aside from the confrontational and obstructive tone of these contentions, this proposal must be rejected for several reasons. First, as Motorola itself recognizes, if the Commission were to include discussions of alternative spectrum, then it would have to include "users of and applicants for" such bands on the Advisory Committee. Cf. id., at 5 n.5. Formal consideration of such bands would likely increase the size of the Advisory Committee over the 25 maximum set in the Notice (¶ 10) and the NRA (5 U.S.C. § 585(b)), and delay the proceeding substantially, something Motorola purports to oppose. Id. at 3-4.

The status of these additional interests would also need clarification if alternative bands were considered. Motorola suggests that interests in these alternative bands be accorded some kind of ancillary status. Id., at 5 n.5. But any interested

Motorola did not apply to become a member of the Committee, and has not submitted a commitment to participate in it in good faith as required by the Notice (¶ 11(c)).

party would likely insist on being involved in negotiations over the full range of technical rules which may affect the spectrum in which it has an interest. The number of probable "Big LEO" committee members is more than large enough now without including additional as yet unidentified interests.

Moreover, contrary to Motorola's insistence that the Commission expedite the Committee negotiations, Motorola Comments, at 3, the process of identifying additional interested parties, publishing a notice calling for applications on the Committee, and processing those applications would easily delay the start of the Committee meetings by three months -- until after the date the Commission has already set for conclusion of the Committee's work.

Expanding the subject matter of the negotiated rulemaking to include these additional bands would also require an expanded time period to complete the Committee's work. Before technical rules could be adopted, the Committee would have to decide which bands would be used for which purposes. While each applicant currently has a technical proposal for its use of the RDSS/MSS bands, the use of alternative bands would require new studies, and in all likelihood new notice and comment proceedings. Completion of such studies may require a considerable length of time beyond the current three-month time frame for the Committee's work. See Notice, ¶ 13.

A further reason for rejecting this proposal is Motorola's flawed premise that "spectrum sharing" means finding additional spectrum for all applicants but itself. See Motorola's Petition for Expedited Action (filed June 9, 1992). That is not the

purpose of the Advisory Committee set out in the Notice.^{5/} See Notice, ¶ 6. Rather, the purpose of the Committee is to consider rules "to maximize the sharing of spectrum and the capacity for multiple entry." Id.

Further, Motorola's suggestion infringes on the statutory scope of the Advisory Committee. The Commission has said the Committee should consider "what technical rules should be adopted for this service so as to maximize the sharing of spectrum and the capacity for multiple entry." Notice, ¶ 6(a). Section 586(a) of the NRA specifies as "duties of Committee" that the Committee "shall consider the matter proposed by the agency for consideration and shall attempt to reach a consensus concerning a proposed rule with respect to such matter and any other matter the committee determines is relevant to the proposed rule." 5 U.S.C. § 586(a).^{6/} Motorola's proposal prejudices what matter or matters are relevant to the Committee, deprives Committee members of their rights to consider what are relevant matters, and flies in the face of the NRA's requirement to reach a "consensus" on any proposed rules, for example, whether the RDSS/MSS allocation is indeed sufficient to accommodate all applicants. See 5 U.S.C. § 586(f).

^{5/} Motorola's approach is also a back door way to attempt to legitimize band splitting. LQSS strongly opposes it for the reasons expressed in its Consolidated Reply Comments, at 10-15 (filed March 27, 1992).

^{6/} In this regard, there is no need for the Commission to assign the Committee the separate task of considering this issue. However, if the Commission were to modify the matters for discussion, then a new Public Notice and call for applicants would be required, as discussed above.

Motorola's suggestion apparently arises from its mistaken assumption that it has some infeasible property interest in the RDSS/MSS spectrum, and since its system may be incompatible with other systems, that other applicants must be authorized to use alternative spectrum, if at all. This flawed premise is contrary to the letter and the spirit of the Commission's Notice and the NRA. The Commission should not tolerate Motorola's tactics which threaten any "consensus" of the Committee before its work begins. Accordingly, Motorola's suggestion with respect to alternative spectrum must be flatly rejected.

II. MOTOROLA'S ATTEMPT TO BY-PASS THE COMMISSION'S RULEMAKING PROCESS MUST ALSO BE REJECTED.

In its Comments, Motorola advanced the suggestion that the four LEO applicants which propose to use CDMA should be required to agree on a common system design and homogenous spectrum sharing plan prior to the commencement of the Advisory Committee's negotiations. Motorola Comments, at 5-6. This suggestion must be rejected as both absurd and impermissible under the Commission's Notice and the NRA.

Motorola's suggestion rests on two errors. First, CDMA applicants have never taken the position that the same technical system would have to be adopted in order for spectrum to be shared. None of their comments has suggested that working together to share the RDSS/MSS spectrum requires that the applicants adopt a "common system design" as Motorola proposes. There is no basis for Motorola's view.

Second, Motorola simply assumes that both FDMA/TDMA and CDMA modulation forms would be permitted for systems in the RDSS/MSS bands. See Motorola Comments, at 5 ("Any discussion as to achieving CDMA and FDMA system sharing" requires explanation of common design for CDMA). The manner and means for spectrum sharing in the RDSS/MSS bands is a matter to be reviewed, clearly encompassed within the rules under consideration by the Commission in this proceeding, and has been designated as a subject area for the Advisory Committee negotiations.

The Notice in this docket specified as one of the two issues for the Advisory Committee "what technical rules should be adopted for this service so as to maximize the sharing of spectrum and the capacity for multiple entry." Notice, ¶ 6(a). Obviously, in order to resolve this issue, the Advisory Committee must consider what modulation form or forms should be permitted in the RDSS/MSS spectrum. Cf. 47 C.F.R. §§ 25.141(e-f) (specifying sharing requirements for RDSS bands). And, they must do so at present under the NRA's requirement of reaching a "consensus" on any proposed rules. 5 U.S.C. § 586(f).

Any agreement among the CDMA applicants on a "common system design" prior to the rulemaking would constitute a de facto decision as to spectrum sharing contrary to the Commission's Notice in this docket and the NRA. It would usurp the authority delegated to the Advisory Committee itself, and deprive other participants of their right to consider the matter. Accordingly, this suggestion should also be rejected.

III. CONCLUSION.

The Commission should stick to the course it has set for the Advisory Committee and the issues it has established as its purview. There is no need to expand these issues to include those proposed by Motorola. Accordingly, Motorola's suggestions should be rejected. The Advisory Committee should be allowed to commence the work outlined in the Notice forthwith.

Respectfully submitted,

LORAL QUALCOMM SATELLITE SERVICES, INC.

By: Linda K. Smith (wdu)

Linda K. Smith
Robert M. Halperin
William D. Wallace
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 624-2500

Leslie A. Taylor (wdu)

Leslie A. Taylor
Leslie Taylor Associates
6800 Carlynn Court
Bethesda, Maryland 20817-4302
(301) 229-9341

Its Attorneys

Dated: September 29, 1992

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 29th day of September, 1992, caused copies of the foregoing "Reply Comments" of Loral Qualcomm Satellite Services, Inc. to be served by hand delivery (as indicated with *) or by U.S. mail, postage prepaid, to the following:

*Chairman Alfred C. Sikes
Federal Communications
Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner James H. Quello
Federal Communications
Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Sherrie P. Marshall
Federal Communications
Commission
Room 826
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Andrew C. Barrett
Federal Communications
Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Ervin S. Duggan
Federal Communications
Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

*William Torak
Deputy Chief
Spectrum Engineering Div.
Federal Communications
Commission
Room 7130
2025 M Street, N.W.
Washington, D.C. 20554

Philip L. Malet
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

James G. Ennis
Fletcher Heald & Hidreth
1225 Connecticut Ave., N.W.
Suite 400
Washington, D.C. 20036

Michael D. Kennedy
Motorola, Inc.
Suite 400
1350 I Street, N.W.
Washington, D.C. 20005

Norman P. Leventhal
Raul P. Rodriguez
Stephen D. Baruch
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809

*Thomas P. Stanley
Chief Engineer
Federal Communications
Commission
2025 M Street, N.W.
Suite 7002
Washington, D.C. 20554

*Cecily C. Holliday
Satellite Radio Branch
Federal Communications
Commission
2025 M Street, N.W.
Room 6010
Washington, D.C. 20036

*Cheryl Tritt
Chief, Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

*Wendell R. Harris
Assistant Bureau Chief
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W.
Room 534
Washington, D.C. 20554

Walda W. Roseman
Director
Office of International
Communications
Federal Communications
Commission
Room 658
1919 M Street, N.W.
Washington, D.C. 20554

Lon C. Levin
Vice President
American Mobile Satellite Corp.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036

*Fern J. Jarmulnek
Federal Communications
Commission
2025 M Street, N.W.
Room 6324
Washington, D.C. 20554

*Raymond LaForge
Federal Communications
Commission
2025 M Street, N.W.
Room 7334
Washington, D.C. 20554

*Thomas Tycz
Common Carrier Bureau
Federal Communications
Commission
2025 M Street, N.W.
Room 6010
Washington, D.C. 20554

*James R. Keegan
Chief, Domestic Facilities
Division
Federal Communications
Commission
2025 M Street, N.W., Room 6010
Washington, D.C. 20554

Bruce D. Jacobs, Esquire
Glenn S. Richardc, Esquire
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(Counsel for AMSC)

Robert A. Mazer, Esquire
Albert Shuldiner, Esquire
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, N.W.
Suite 800
Washington, D.C. 20005
(Counsel for Constellation)

Jill Abeshouse Stern, Esquire
Shaw, Pittman, Potts &
Trowbridge
2300 N Street, N.W.
Second Floor
Washington, D.C. 20037
(Counsel for Ellipsat)

Edward R. Adelson
Vice President
Industry Activities
Aeronautical Radio, Inc.
2551 Riva Road
Annapolis, MD 21401-7465

Abdul Tahir
Director, GPS Development
Litton Systems, Inc.
6101 Condor Drive
Moorpark, CA 93021

Linda C. Sadler
Manager, Governmental Affairs
Rockwell International Corp.
1745 Jefferson Davis Highway
Arlington, VA 22202

Paul J. Sinderbrand, Esquire
Dawn G. Alexander, Esquire
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Washington, D.C. 20005-3919
(Counsel for Wireless Cable
Association International, Inc.)

Victor J. Toth, P.C.
Law Offices
2719 Soapstone Drive
Reston, VA 22091
(Counsel for Celsat, Inc.)

Cheryl Lynn Schneider, Esquire
Communications Satellite
Corporation
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024

Gerald J. Markey
Federal Aviation Administration
800 Independence Ave., S.W.
Washington, D.C. 20591

B. E. Morriss
Deputy Manager
National Communications System
Washington, D.C. 20305-2010

R. A. Davis
Vice President, Engineering
Boeing Commercial Airplane Group
P.O. Box 3707, MS GR-UT
Seattle, WA 98124-2207


William D. Wallace